

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
ABILENE DIVISION

LAWRENCE GENE PORTER,	)	
	)	
Petitioner,	)	
	)	
v.	)	CIVIL ACTION NO.
	)	1:15-CV-007-C
LORIE DAVIS, Director,	)	
Texas Department of Criminal Justice,	)	
Correctional Institutions Division,	)	
	)	
Respondent.	)	

**ORDER**

Before the Court is the petition for writ of habeas corpus under 28 U.S.C. § 2254 filed by Petitioner, Lawrence Gene Porter, along with the October 11, 2016 report and recommendation of the United States Magistrate Judge and Petitioner's October 26, 2016 written objections thereto. The Court has made an independent review of the following matters in the above-styled and -numbered civil action:

1. the pleadings and record;
2. the report and recommendation of the United States Magistrate Judge filed October 11, 2016; and
3. the Petitioner's written objections to the report and recommendation of the United States Magistrate Judge filed October 26, 2016.

The Court, after de novo review, concludes that Petitioner's objections must be overruled, that the petition for writ of habeas corpus should be dismissed for lack of exhaustion and alternatively denied, and that the motion for leave to file and petition for restitution should be denied.

It is therefore **ORDERED** that the report and recommendation of the magistrate judge is **ADOPTED**.

It is further **ORDERED** that the motion for leave to file and petition for restitution (doc. 29) is **DENIED**.

It is further **ORDERED** that the petition for writ of habeas corpus under 28 U.S.C. § 2254 is **DISMISSED** for lack of exhaustion and alternatively **DENIED**.

*Certificate of Appealability*

Federal Rule of Appellate Procedure 22 provides that an appeal may not proceed unless a certificate of appealability (COA) is issued under 28 U.S.C. § 2253. *See* Fed. R. App. P. 22(b). Rule 11 of the Rules Governing Section 2254 Proceedings now requires that the Court “must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Rules Governing Section 2254 Proceedings in the United States District Courts, Rule 11(a) (December 1, 2009). Pursuant to Rule 22 of the Federal Rules of Appellate Procedure and 28 U.S.C. § 2253(c), Petitioner Porter has failed to show that reasonable jurists would (1) find this Court’s “assessment of the constitutional claims debatable or wrong” or (2) find “it debatable whether the petition states a valid claim of the denial of a constitutional right” and “debatable whether [this Court] was correct in its procedural ruling,” and any request for a certificate of appealability should be denied. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000).

All relief not expressly granted is denied and any pending motions are hereby denied.

**SO ORDERED** this 17<sup>th</sup> day of November, 2016.

  
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SAM R. CUMMINGS  
Senior United States District Judge